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INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Case No 1

MOTION No. _____

THE UNITED STATES OF AMERICA, et al

vs.

ARAKI, Sadao, et al,

Defendants.

DEMURRER TO CERTAIN COUNTS OF THE INDICTMENT
FILED WITH THE TRIBUNAL 3 May 1946.

Now comes the defendant, HIROTA, Koki, by his attorneys of record, and files a demurrer to the herein-after described counts and parts of the Indictment heretofore filed with the Tribunal on 3 May 1946, and says such counts and parts of the Indictment are bad, both in substance and form.

The portions of the Indictment reached by the demurrer are:

Counts 1 to 17, inclusive, and the alleged preamble to such counts; counts 19 to 25, inclusive; counts 27 to 38, inclusive; counts 37 to 47, inclusive, and the alleged preamble to such counts; and count 52.

The points to be argued are:

1. The foregoing counts and parts of the alleged Indictment do not charge the commission by this defendant of any offense known to any body of law in the world.

2. The defendant occupied the high office in the Japanese Government of Ambassador to Russia, Foreign Minister, and Prime Minister. He is indicted for alleged

acts and possibly acts of omission while serving in his official capacity as aforesaid in the Japanese Government, and not otherwise. The actions taken by the defendant while occupying the aforesaid offices in the Japanese Government are beyond the reach of any body or system of law known to the world, and are immune to re-examination by any sovereign nation or group of nations anywhere in the world.

3. The alleged acts and possibly acts of omission charged against the defendant in the foregoing counts and parts of the alleged Indictment were acts of the Japanese Government acting in its sovereign capacity as a government, and this defendant is not subject to prosecution as an individual or by reason of having been an actor in the performance of his governmental functions.

4. Neither of the foregoing counts or parts of the alleged Indictment inform this defendant of the nature and the cause of the accusation against him.

5. The foregoing counts and parts of the alleged Indictment consists in their entirety of conclusions and argumentative matter.

6. And for other matters appearing on the face of the foregoing counts and parts of the alleged Indictment to be argued.

HIROTA, Koki

By

/s/ Tadashi Hanai

Tadashi Hanai

Japanese Counsel

/s/ David F. Smith

David F. Smith

American Counsel

To: The International Military Tribunal for the Far East;

And to: The General Secretary Thereof.